

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FREDERICK JAMES DAVIS,

Plaintiff,

v.

STATE OF MISSOURI, et al.,

Defendants.

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No. 4:08-CV-1927 CAS

MEMORANDUM AND ORDER

This matter is before the Court on the motion of Frederick Davis (registration no. 138650), an inmate at St. Louis County Justice Center, for leave to commence this action without payment of the required filing fee. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay the entire filing fee and will grant the motion. See 28 U.S.C. § 1915(b)(1). Furthermore, based upon a review of the complaint, the Court finds that the complaint should be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B).

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the

Clerk of Court each time the amount in the prisoner's account exceeds \$10, until the filing fee is fully paid. Id.

Plaintiff has submitted an affidavit and a certified copy of his prison account statement for the six-month period immediately preceding the submission of his complaint. A review of plaintiff's account indicates an average monthly deposit of \$0.00, and an average monthly balance of \$0.00. Plaintiff has insufficient funds to pay any portion of the filing fee. Accordingly, the Court will not assess an initial partial filing fee.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if "it lacks an arguable basis in either law or in fact." Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to state a claim upon which relief can be granted if it does not plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff brings this action under 42 U.S.C. § 1983. Named as defendants are the State of Missouri, St. Louis County, Missouri,¹ the St. Louis County Justice Center (“SLCJC”), Unknown Reed (Captain, SLCJC), Unknown Shelton (Officer, SLCJC), Unknown Mitchell (same), Unknown Mohler (same), Unknown Page (same), B. Barnes (Lieutenant, SLCJC), and Julia Childrey (Floor Unit Manager, SLCJC). Plaintiff seeks monetary and injunctive relief.

Plaintiff alleges that on November 30, 2008, defendant Lewis sprayed pepper spray into his cell while plaintiff was attempting to comply with Lewis’s order to cuff up. Plaintiff claims that defendants Mitchell and Mohler then entered his cell and assaulted him after he was secured with handcuffs. Plaintiff alleges that Mitchell hit him on the jaw and that Mohler applied leg irons so tightly that they cut plaintiff’s leg. Plaintiff says the incident occurred because defendant Shelton told the other defendants that plaintiff had thrown something out of his cell, which plaintiff maintains is not true. Plaintiff claims that defendant Reed, a supervisor, witnessed the entire incident but did not come to his aid.

Plaintiff claims that defendant Page violated his rights because Page asked him whether another prisoner was secure. Plaintiff says that defendant Childrey violated his rights by not redressing his grievances. Plaintiff claims that Barnes violated his rights by leaving him in the “supper mix’s” for more than a month.

Plaintiff claims that the state and municipality defendants were negligent in how they ran the SLCJC.

¹This defendant is sued as “Clayton County, Missouri”.

Discussion

The complaint is silent as to whether defendants are being sued in their official or individual capacities. Where a “complaint is silent about the capacity in which [plaintiff] is suing defendant, [a district court must] interpret the complaint as including only official-capacity claims.” Egerdahl v. Hibbing Community College, 72 F.3d 615, 619 (8th Cir. 1995); Nix v. Norman, 879 F.2d 429, 431 (8th Cir. 1989). Naming a government official in his or her official capacity is the equivalent of naming the government entity that employs the official. Will v. Michigan Dep’t of State Police, 491 U.S. 58, 71 (1989). To state a claim against a municipality or a government official in his or her official capacity, plaintiff must allege that a policy or custom of the government entity is responsible for the alleged constitutional violation. Monell v. Dep’t of Social Services, 436 U.S. 658, 690-91 (1978). The instant complaint does not contain any allegations that a policy or custom of a government entity was responsible for the alleged violations of plaintiff’s constitutional rights. As a result, the complaint fails to state a claim upon which relief can be granted as to the individual defendants, SLCJC, and St. Louis County.

The State of Missouri is not a “person” under § 1983. Will v. Michigan Dep’t of State Police, 491 U.S. 58, 71 (1989). As a result, the complaint fails to state a claim upon which relief can be granted as to the State of Missouri.

For these reasons, the complaint will be dismissed under 28 U.S.C. § 1915(e).

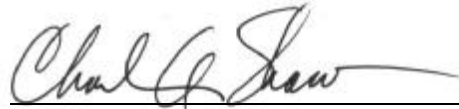
Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis is **GRANTED**. [Doc. 2]

IT IS FURTHER ORDERED that the Clerk shall not issue process or cause process to issue upon the complaint because the complaint is legally frivolous or fails to state a claim upon which relief can be granted, or both.

IT IS FURTHER ORDERED that plaintiff's motion for appointment of counsel is **DENIED as moot**. [Doc. 3]

An Order of Dismissal will accompany this Memorandum and Order.

A handwritten signature in black ink, appearing to read "Charles A. Shaw", is written over a horizontal line.

CHARLES A. SHAW
UNITED STATES DISTRICT JUDGE

Dated this 14th day of January, 2009.